

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REISSUE APPLICATION DECLARATION BY THE ASSIGNEE		Docket Number (optional) 0624-4129												
<p>I hereby declare that:</p> <p>The residence, mailing address and citizenship of the inventors are stated below.</p> <p>I am authorized to act on behalf of the following assignee: <u>Bayer CropScience Inc.</u></p> <p>and the title of my position with said assignee is: <u>Vice President, Secretary and General Counsel</u></p> <p>The entire title to the patent identified below is vested in said assignee.</p> <table border="1"> <tr> <td>Inventor <u>Laurence C. Mudge</u></td> <td>Citizenship <u>U.S.A.</u></td> </tr> <tr> <td colspan="2">Residence/Mailing Address <u>8 Ancram Road, Camden, SC 29020</u></td> </tr> <tr> <td>Inventor <u>N/A</u></td> <td>Citizenship</td> </tr> <tr> <td colspan="2">Residence/Mailing Address</td> </tr> <tr> <td colspan="2"><input type="checkbox"/> Additional Inventors are named on separately numbered sheets attached hereto.</td> </tr> <tr> <td>Patent Number <u>5,599,804</u></td> <td>Date of Patent Issued <u>February 4, 1997</u></td> </tr> </table> <p>I believe said inventor(s) to be the original and first inventor(s) of the subject matter which is described and claimed in said patent, for which a reissue patent is sought on the invention entitled:</p> <p style="text-align: center;"><b>FUNGICIDAL COMPOSITIONS FOR THE ENHANCEMENT OF TURF QUALITY</b></p> <p>the specification of which</p> <p><input type="checkbox"/> is attached hereto.</p> <p><input checked="" type="checkbox"/> was filed on <u>May 19, 2004</u> as reissue application number <u>10 / 849,509</u> and was amended on <u>Dec. 27, 2005 and Apr. 29, 2008</u> (if applicable)</p> <p>I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.</p> <p>I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56.</p> <p><input type="checkbox"/> I hereby claim foreign priority benefits under 35 U.S.C. 119(a)-(d) or (f), or 365(b). Attached is form PTO/SB/02B (or equivalent) listing the foreign applications.</p> <p>I verify believe the original patent to be wholly or partly inoperative or invalid, for the reasons described below. (Check all boxes that apply.)</p> <p><input type="checkbox"/> by reason of a defective specification or drawing.</p> <p><input checked="" type="checkbox"/> by reason of the patentee claiming more or less than he had the right to claim in the patent.</p> <p><input type="checkbox"/> by reason of other errors.</p>			Inventor <u>Laurence C. Mudge</u>	Citizenship <u>U.S.A.</u>	Residence/Mailing Address <u>8 Ancram Road, Camden, SC 29020</u>		Inventor <u>N/A</u>	Citizenship	Residence/Mailing Address		<input type="checkbox"/> Additional Inventors are named on separately numbered sheets attached hereto.		Patent Number <u>5,599,804</u>	Date of Patent Issued <u>February 4, 1997</u>
Inventor <u>Laurence C. Mudge</u>	Citizenship <u>U.S.A.</u>													
Residence/Mailing Address <u>8 Ancram Road, Camden, SC 29020</u>														
Inventor <u>N/A</u>	Citizenship													
Residence/Mailing Address														
<input type="checkbox"/> Additional Inventors are named on separately numbered sheets attached hereto.														
Patent Number <u>5,599,804</u>	Date of Patent Issued <u>February 4, 1997</u>													

[Page 1 of 2]

This collection of information is required by 37 CFR 1.175. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**REISSUE APPLICATION DECLARATION BY THE ASSIGNEE**

Docket Number (Optional) 0624-4129

At least one error upon which reissue is based is described as follows:

See Attached Additional Sheets

[Attach additional sheets, if needed.]

All errors corrected in this reissue application arose without any deceptive intention on the part of the applicant.

I hereby appoint:

 Practitioners associated with Customer Number: 27123

OR

 Practitioner(s) named below:

Name	Registration Number

as my/our attorney(s) or agent(s) to prosecute the application identified above, and to transact all business in the United States Patent and Trademark Office connected therewith.

Correspondence Address: Direct all communications about the application to:

 The address associated with Customer Number: 27123

OR

 Firm or Individual Name

Address

City

State

Zip

Country

Telephone

Email

**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this declaration is directed.

Signature

Date

Aug. 20, 2002

Full name of person signing (given name, family name) Bruce Mackintosh

Address of Assignee

2 T.W. Alexander Drive, Research Triangle Park, NC 27709

**REISSUE APPLICATION DECLARATION BY ASSIGNEE**

**ADDITIONAL SHEETS RE: ERROR(S) UPON WHICH REISSUE IS BASED**

**In re Reissue of: U.S. Patent No. 5,599,804**

Inventor: Laurence C. Mudge

Serial No.: 10/849,509

Filed: May 19, 2004

For: **FUNGICIDAL COMPOSITIONS FOR THE  
ENHANCEMENT OF TURF QUALITY**

One such error being relied upon as a basis for reissue, which caused applicant to claim more than it was entitled to, arises when the claims are construed to embrace the presence of a fungicidal compound not mentioned in the claims, i.e. mancozeb. Under such a claim construction: (A) the method claims (claims 1-9) of the patent could be construed to embrace a method of combatting fungi and enhancing turf quality in turfgrass which comprises applying to said turfgrass synergistic fungicidally effective amounts of a monoester salt of a phosphorous acid of the specified formula (including the compound known as "fosetyl-Al"), phthalocyanine and the fungicidal compound mancozeb; and (B) the fungicidal composition claims (claims 10-21) of the patent could be construed to embrace a mixture of a monoester salt of a phosphorous acid of the specified formula (including "fosetyl-Al"), phthalocyanine and the fungicidal compound mancozeb.

The foregoing possible claim construction, whereby the method and composition patent claims are construed to include the non-recited fungicidal compound mancozeb, does not appear to be consistent with the '804 patent specification at Column 5, lines 10-30. There it states: "The synergistic combinations ["first active agent" and benzoporphyrin/phthalocyanine] according to the invention may be used with advantage in admixture with one another or with

other known fungicides, such as..." -- but mancozeb is not mentioned in the recited list of other known fungicides.

If the '804 patent claims were so construed to embrace a composition or method including mancozeb, the patent claims would be invalid over the prior art Lucas U.S. Patent 5,336,661, a reference of record and considered during the original prosecution for the '804 patent. The Lucas '661 patent describes in the Examples and Table 3 the treatment of crown and root rot with a mixture of the active fungicide ingredients of mancozeb plus fosetyl-Al, obtained by mixing together the commercial fungicides known under the names FORE™ (active ingredient: mancozeb) and ALIETTE™ (active ingredient: fosetyl-Al). See, e.g. '661 patent at Column 4, lines 45-65 and Table 3. As stated in the '804 patent at Column 7, lines 65-66, the fungicide FORE™ contains both mancozeb and Pigment Blue 15, which is a phthalocyanine dye.

The independent claims 1 and 10, as presented in the reissue application, are patentably distinguished over the prior art mixture of ALIETTE™ and FORE™ because they exclude mancozeb and therefore, the product FORE™.

Two additional errors are sought to be corrected in the presented claims 1 and 10. In Patent claim 10, the term "tier" is changed to "for" to correct an obvious mistake. In Patent claim 1, the expression "1 part by weight of" has been relocated to apply to the "first active agent" including both components (i) and (ii), rather than only applying to component (i) as written in patent claim 1. This correction is consistent with patent claim 2 which refers to "1 part by weight" as pertaining to the "first active agent." This is also consistent with patent claim 10 which applies the expression "1 part by weight" to the "first active agent"

## Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.